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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,939	07/12/2001	Su-Cheng Pai	B-4157 618733-9	1982
36716	7590	09/21/2004	EXAMINER	
LADAS & PARRY 5670 WILSHIRE BOULEVARD, SUITE 2100 LOS ANGELES, CA 90036-5679			CROSS. LATOYA I	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/903,939	PAI ET AL.
	Examiner	Art Unit
	LaToya I. Cross	1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 June 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 13-18 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12-17-01; 3-31-03.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of group I, claims 1-12 in the reply filed on June 22, 2004 is acknowledged. The traversal is on the ground(s) that the claimed sample take-up device cannot be used in a materially different process. This is not found persuasive because the Examiner does not agree that the claimed liquid take-up device must be used in methods for chemical analysis. First, it should be noted that none of the components of the sample liquid take-up device as claimed perform any "chemical analysis". In the broadest sense, the sample liquid take-up device merely brings sample into fluid communication with a reagent. No analysis takes place. The analysis part of the method actually occurs when the sample take-up device is coupled with an analyzer. The analyzer is not a part of the sample take-up claim. Thus, it cannot be said that the sample take-up device must be used in chemical analysis processes. In fact, as stated in the restriction requirement, the sample take-up device may be used in transporting fluids since reagents are transported into the outer tube, mixed with sample in the inner tube and moved to another location.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,528,158 to Gilles et al.

Gilles et al teach an automated sampling system, comprising a tube assembly (20). The tube assembly, shown in figures 3 and 4, includes an inner tube (28) and an outer tube (30) mounted around the inner tube (28). There exists a space between the inner tube and the outer tube, into which reagent flows, as recited in claims 5 and 11. Both the inner tube and the outer tube have free ends (36, 40 respectively). The free end (40) of the outer tube is adapted to be immersed into a sample container (16). An additional tube (42) provides a liquid connection to the outer tube (30). Reagent, such as diluent (102), flows into the space between the outer tube (30) and inner tube (28), via tube (42). The free end of the inner tube is offset shortly from the free end of the outer tube, creating a chamber space (38). This chamber space allows the sample to mix with the diluent. Note the arrows (110) showing the flow of diluent (102) into the space between the inner tube and outer tube and arrows and down toward the free end of the outer tube. Also note arrow (112) showing sample fluid mixed with the diluent and flowing upward away from the free end of the outer tube (col. 7, lines 9-16). Gilles et al teach that pumps 68, 70 are connected to inner tube and the reagent tube. Gilles et al further teach that the pumps operate at different rates, with pump (68), connected to the inner tube operating at a faster rate than pump (70), connected to the reagent tube, as recited in claims 1 and 7. Although the pumping raters are different, the reference teaches that the pumps operate constantly providing a steady flow of reagent into the outer tube and sample mixed with reagent out of the inner tube, as recited in claims 3, 4, 9 and 10 (col. 4, lines 1-3). With respect to claims 2, 6, 8 and 12, Gilles et al teach that the tube assembly is capable of moving between different liquids (sample, solvent, diluent and cleaning solution). When the tube assembly

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moves between stations, and the free ends of the inner tube and outer tube are not immersed in fluid, then air is aspirated through the tube. For example, when the tube assembly moves from cleaning station to the sampling station, the tube assembly aspirates two parts diluent to one part air. Since the pumping rate of pump (68) is higher than that of pump (70), all of the diluent is completely drawn up into the inner tube, thereby preventing any diluent from dripping out (col. 5, lines 67 – col. 6, line 15). Further at col. 7, lines 29-36, Gilles et al teach that when moved from one location to another, there are segments where air is aspirated through the assembly. For example, a segment of diluent and air occurs, followed by a segment of diluent and cleaning solvent and then diluent and air again (col. 7, lines 29-39).

Therefore, for the reasons set forth above, Applicant's claimed invention is deemed to be anticipated, within the meaning of 35 USC 102(b) in view of the teachings of Gilles et al.

Citation of Relevant Prior Art

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 5,730,938 teaches an inner tube (130) inside of a hollow housing (144), wherein diluent is flowed into the space between the inner tube and housing. The sample in container (116) mixes with diluent and flow upward and out of the inner tube. See figure 3.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIC


Jill Warden
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Technology Center 1700